

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Waiver of Deadline for)	Docket No. 02-60
Submission of Grant Application for)	
the Rural Health Care Pilot Program)	

To: Wireline Competition Bureau

**Petition for Waiver of Deadline for Submission of Grant Application for the
Rural Health Care Pilot Program**

Western Carolina University, the Eastern Band of the Cherokee Indians and the Jackson County Department of Health (jointly referred to as “Applicant”) respectfully request a waiver of the May 7, 2007 date for filing an application for the Rural Health Care Pilot Program. Applicant experienced technical difficulties while attempting to file its grant application online using the ECFS system. These technical difficulties resulted in a filing time of 12:18 a.m. MST on Tuesday, May 8, 2006 rather than prior to 12:00 a.m. on Monday, May 7, 2006. Applicant is asking the Bureau to waive the deadline in this instance and allow the untimely filing of the grant application for the Rural Health Care Pilot Program. Grant of this petition will directly advance the public interest because the Commission acknowledges the significance of enhancing public and non-profit health care providers’ access to advanced telecommunications and information services. Applicant’s proposal if accepted and subsequently awarded will allow for the construction of the necessary infrastructure that will connect rural health care providers in the challenging mountainous terrain of western North Carolina, particularly connections with the Eastern Band of Cherokee Indians health care providers both on the reservation and in outlying counties. Applicant submits that

granting this waiver is also consistent with Commission precedent. Additionally, accepting Applicant's submission does not create an insuperable obstacle and outweighs the harm to the Applicant if its submission fails to be considered. Finally, granting this application's filing further serves the public interest by allowing rural health care providers in western North Carolina and those on and part of the Cherokee reservation an opportunity to present their proposal for connection consideration by the Commission.

FACTS

Early on May 7, 2007, Applicant followed the Commission's instructions for submitting its completed proposal via the internet by first submitting an email request with "get form <email address>" in the subject box with the understanding that a form and instructions would be sent in reply.

To get filing instructions for e-mail applications, commenters should send an e-mail to ecfs@fcc.gov and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. (FCC Order, page 7)

An email was received back from ECFS, but there was no form or instructions attached. (A copy of Applicant's representative's email is attached hereto.) Unfortunately, Applicant's representative noted the reply email but failed to note that there was no form attached. Later that evening when Applicant was ready to submit the completed proposal, Applicant's representative learned for the first time that there was no form or instructions attached to the reply email. Efforts to locate the appropriate form proved fruitless. Additionally, telephone calls to the "help desk" at that hour, significantly past 5:00 p.m. EST, were fruitless, as well. Finally, it was only after waking individuals with specialized computer expertise and eliciting their help that Applicant was able to convince the ECFS system to accept the submission. By that time, it was 12:18 a.m. MST on May 8, eighteen minutes passed the deadline, or so Applicant's representative believed.

As soon after 8:00 a.m. EST as feasible the following morning, Applicant's representative began calling available telephone numbers at the Commission to inform the appropriate FCC personnel of what had transpired. She spoke to several individuals and left numerous messages. Additionally, a representative identified as "Nathan" from the help desk returned her call from the previous evening. He informed Applicant's representative for the first time that the time deadline was 12:00 a.m. EST. Applicant had relied on other information provided by the Commission. Specifically, on the "Electronic Comment Filing System" page on the FCC website [<http://www.fcc.gov/cgb/ecfs/>] under "Tips and Notations" the following bullet appears:

The filing deadline times for comments are as follows: Electronic/email - before 12:00 a.m. midnight, Hardcopy (paper) - by 7:00 p.m. Comments become available throughout each day as they are disseminated.

There is no notation that the 12:00 a.m. deadline was "Eastern Standard Time" specific. Consequently, what Applicant had believed was only 18 minutes late according to that information, was in fact two hours and 18 minutes late according to the FCC representative. No specifics about time deadlines for electronic filing were in the FCC Order.

Applicant received email confirmation of receipt as well as confirmation from the help desk representative Nathan. Applicant had completed the application proposal but was unable to obtain access to the form until past the deadline. The delay was due to lack of knowledge and experience with the FCC submission process and the technological difficulties accessing the system.

DISCUSSION

The Commission's rules may be waived for good cause shown.¹ The regulations provide that "[t]he provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time

¹ 47 C.F.R. § 1.3.

by the Commission” In particular, the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.² In addition, the Commission may consider whether grant of a waiver will avoid hardship and inequity or result in more effective implementation of overall Commission policy.³ Applicant respectfully suggests that this requested waiver both meets and exceeds these criteria.

For the foregoing reasons, Western Carolina University, the Eastern Band of the Cherokee Indians and the Jackson County Department of Health respectfully request that the Bureau grant this Petition and direct the acceptance of their grant application for the Rural Health Care Pilot Program.

Respectfully submitted,
Western Carolina University
Eastern Band of the Cherokee Indians
Jackson County Department of Health

By: /s/Cynthia A. Brown, Ph.D.
(228) 365-3015

Principal Investigator



May 9, 2007

² *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

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Dear Sir / Madame,

Please e-mail me the example and form for submitting proposal for grant consideration.

My e-mail address